IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 260 OF 2007

SHRI. ANKUSH RAMNATH SHIRODKAR
(DECEASED) THROUGH HIS LR'S AND
ANR., ... Petitioners

Versus

SHRI. VASSUDEV N. KAMAT DALAL AND
ANR., ... Respondents

Mr. V. R. Parshekar, Advocate for the petitioner.

Mr.S.D. Lotlikar, Sr. Advocate with Mr. Ryan Menezes, Advocate for respondent no.1.

Coram:- R. S. MOHITE, J.

Date:- 27th July, 2007

P.C.

This Writ Petition impugning an order made by C.J.S.D., Mapusa on 28.2.2007 dismissing an application filed by the original defendant to frame an additional issue relating to his being a mundkar of the suit property. On perusal of the plaint, it is clear that the plaintiff filed the suit on the footing that the defendant encroached upon his property in May 1999. Admittedly the issues relating the creation of alleged encroachment have already been framed. As rightly pointed out by the Counsel appearing for the respondent (original plaintiff) in the case based on similar facts, this Court in the case of Miss Telma de Souza Gonsalves v/s Mr. Dashrat Shantaram & others reported in 1998 (1) Goa Law Times 429 took a view that in such a suit, the only issue was as to whether there was any encroachment. It was open for the defendants to prove that he was in possession of the property and had effected the construction earlier than the date of alleged encroachment. This Court took the view that the issue of mundkarship was not required to be framed as once the defendant

could show that he was not an encroacher and was in occupation prior to the date of alleged encroachment, the suit must fail and the capacity in which he was occupying earlier was thus not required to be decided in the plaintiff's suit.

In this matter, I am not inclined to entertain the Writ Petition and the same is dismissed.

R. S. MOHITE, J.

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